

Appl. No. 10/624,005
Atty. Docket No. AA559
Amtd. dated September 8, 2005
Reply to Office Action of July 8, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 10 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Nease et al. (US 5580411)

Claims 1 has been rejected under 35 USC §103(a) as being unpatentable over Nease et al. (US 5,580,411). In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* The Office Action has failed to establish a *prima facie* case of obviousness because there is no motivation to modify the cited reference and the cited reference fails to teach or suggest all of the claim limitations of the claimed invention.

For instance, the subject Office Action suggests that "*Nease et al. (figure 8) teaches fastening member structure including a member extending in the longitudinal and lateral direction and further being asymmetric with respect to the lateral centerline and symmetric with respect to the longitudinal centerline. While the particular exact measurements are not clearly shown, it would appear that the key asymmetry and symmetry are suggested by the fastening tab of Nease. Any slight change would appear to be obvious over the teaching of Nease.*"

However, in response to the First Office Action of November 30, 2004, Applicants previously asserted that Figure 8 actually depicts a series of side panels being cut from a web and not shaped tabs. The Office found Applicant's argument to be nonpersuasive explaining that Applicant's claim provides no discriminant between the tab and a panel. According to the Office, the tab of the fastening member claimed is integral with the panel and is met by the structure of Nease. The Office further asserts that the Applicants' fastening member offers no claimed improvement over that disclosed by Nease and that the efficiencies of the claimed shape are clearly shown by Nease and are inherent therein.

Applicant respectfully disagrees with the findings made by the Office, particularly, the assertions that the Applicant's invention offers no claimed improvement

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over Nease and that the efficiencies of the claimed shape are clearly shown by Nease and are inherent therein.

The fastening member (48) claimed in claim 1 includes a base panel (49) and a shaped tab (51) extending laterally therefrom as two components forming the fastening member. The shaped tab (51) has a contour edge comprising a shaped upper edge (126) and a shaped lower edge (128). The shaped upper edge (126) is defined on page 12, lines 17-19 of the specification (in reference to Figure 7) as extending between the point D and the point E and the shaped lower edge (128) is defined as extending between point E and point F. The shaped upper edge and the shaped lower edge are symmetric with respect to the longitudinal centerline (L2) of the shaped tab (51) when relatively shifted in the longitudinal direction and are asymmetric with respect to the lateral centerline (T1) of the fastening member (48).

The improvement and efficiencies offered by the side panel claimed over the side panels disclosed in Figure 8 of Nease is a fastening member which has directionality and which is able to be easily and inexpensively manufactured without creating trim. Directionality relates to the line of tension about the waist of the wearer which is preferably disposed at an angle on the wearer when the fastening member is fastened. The asymmetricalness of the shaped upper edge 126 and the shaped lower edge 128 with respect to the lateral centerline T1 of the fastening member 48 allows to provide the directionality of the shaped tab 51. The symmetricalness of the shaped upper edge 126 and the shaped lower edge 128 with respect to the longitudinal centerline L2 of the shaped tab 51 when relatively shifted in the longitudinal centerline L2 allows to continuously manufacture a fastening member easily and inexpensively without forming a trim. (Specification page 12, lines 32-36 through page 13, lines 1-5).

Figure 8 of Nease discloses a shaped side panel. Nease does not teach or suggest a side panel having a shaped tab. Particularly, a shaped tab having a shaped upper edge and a shaped lower edge which are symmetric with respect to the longitudinal centerline of the shaped tab when relatively shifted in the longitudinal direction enabling the fastening member to be easily manufactured without creating trim and which are asymmetric with respect to the lateral centerline of the side panel providing a fastening member which has directionality.

Accordingly, Applicants respectfully assert that the subject Office Action fails to establish a prima facie case of obviousness as it relates to Claim 1. As such, Applicants respectfully assert that this obviousness rejection has been overcome.

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The Office has also rejected claims 6-10 under 35 USC §103(a) as being unpatentable over Nease et al. (US 5,580,411). For the aforementioned reasons pertaining to claim 1, Applicants assert that claims 6-10 are nonobvious in view of Nease and therefore patentable over Nease. However, in addition, in regards to claim 6, the Office asserts that the side panel disclosed in Nease includes a shaped tab with a proximal portion having a recess. None of the side panels disclosed in Nease include a shaped tab, much less a shaped tab with a proximal portion having a recess. As to claims 7 and 8, according to the Office, all corners of the tab disclosed in Figure 8 of Nease are rounded. However, as previously explained, Nease does not teach or disclose a shaped tab. In regard to Figure 9, according to the Office, fastening material is disposed on the tab of Nease. However, Nease does not teach a fastener material disposed on the tab portion of the side panel disclosed in Figure 8.

Rejection Under 35 USC §103(a) Over Nease in view of Provost

Claims 2-5 have been rejected under 35 USC §103(a) as being unpatentable over Nease et al. (US 5,580,411) in view of Provost (US 4,670,960). According to the Office, further modification of the fastening member structure of Nease such that the distances and angles as claimed would have been obvious in view of the lobed fastener of Provost (Figure 11) who appears to teach such relationships in the asymmetric lobed fastener found at the bottom of the grouping.

Provost is directed to a strip fastener material for releasably fastening two pieces of fabric together. Since Provost does not disclose side panels as taught by Nease, there is no motivation to combine Provost with Nease. Even if the necessary motivation were present to combine the teachings of Provost with that of Nease, the combination of Nease and Provost does not teach or suggest a fastening member comprising a shaped tab as claimed, much less a fastening member comprising a shaped tab including the unique features claimed in claims 2-5. As such, Applicants respectfully assert that the subject Office Action fails to establish a *prima facie* case of obviousness as it relates to Claims 2-5.

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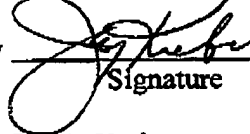
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC §103(a). Early and favorable allowance of claims 1-10 in the case is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Signature

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